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JUL 11 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

July 11, 1994

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: GN Docket No. 93-252

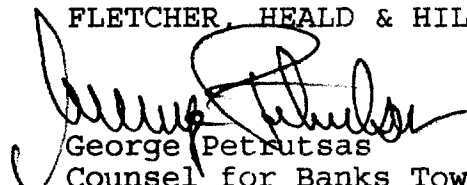
Dear Mr. Caton:

Transmitted herewith for filing, on behalf of Banks Tower Communications, are an original and nine copies of its Reply Comments in the above-referenced rule making proceeding.

Please communicate with this office if additional information is needed.

Very truly yours,

FLETCHER, HEALD & HILDRETH

  
George Petrutsas  
Counsel for Banks Tower  
Communications Ltd.

GP:cej  
Enclosures

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BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

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JUL 11 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Implementation of Sections 3(n) ) GN Docket No. 93-252  
and 332 of the Communications Act )  
 )  
Regulatory Treatment of Mobile )  
Services )

To: The Commission

**REPLY COMMENTS OF  
BANKS TOWER COMMUNICATIONS LTD.**

Banks Tower Communications Ltd. ("Banks Tower"), by counsel, submits its Reply Comments in response to the Commission's Further Notice of Proposed Rule Making, released in this proceeding on May 20, 1994, (FCC 94-100). With these reply comments, Banks Tower wishes to register its strong opposition to a proposal submitted in this proceeding by Nextel Communications, Inc. ("NEXTEL") for the Commission to create a 200 block of contiguous 800 MHz channels, namely channels Nos. 400-600, exclusively for ESMR licensing in Major Trading Areas ("MTA"). In order to create that contiguous 200-channels block, NEXTEL would have the Commission relocate many of the existing SMR licensees to lower frequencies, i.e., to channels Nos. 1-400. Banks Tower operates fully loaded SMR systems in the Philadelphia and in the Atlantic City areas on frequencies within the 400-600 MHz channel group so that adoption of NEXTEL's proposal would require it to vacate its frequencies within those channel groups.

Banks Tower respectfully submits that adoption of NEXTEL's proposal is not warranted. On the contrary, adoption of that proposal could create impermissible disparities within the SMR service. In any event, the massive relocation of SMR facilities contemplated by the proposal would be disruptive and costly and, consequently, against the public interest. Therefore, Banks Tower urges the Commission to reject NEXTEL's proposal.

**I. The proposed reallocation of the SMR  
800 radio spectrum is not warranted**

NEXTEL argues that the creation of a contiguous 800 MHz block of frequencies for the exclusive assignment of ESMR system operations in large MTAs "is essential" to "redress" the substantial "disparities" between frequency assignments for ESMR systems and those for cellular and PCS services. Banks Tower disagrees. While Banks Tower agrees that some of the disparities between cellular and the SMR services should be addressed, and where practical eliminated, the "disparity" NEXTEL seeks to address here, particularly in the manner it has proposed, is not one of them. This is because the cellular and the SMR services were established by the Commission to serve fundamentally different communications requirements and the spectrum allocations and frequency assignment policies for those services were designed accordingly. SMR licensees are not required to provide the kind of communication services that cellular systems are required to provide. In other words, SMR licensees are not required to provide broadband, fully interconnected, nationally compatible radiotelephone services, as are cellular licensees.

For such services, the Commission decided that substantial, contiguous spectrum assignments are important, and the cellular regulatory structure provides for such assignments. SMR systems were intended to and predominantly do provide dispatch and dispatch related services. For such services, contiguous, broadband assignments are not necessary. NEXTEL's decision to pursue services similar to those provided by cellular systems was voluntary. NEXTEL cannot now properly claim "regulatory disparity" because it may not have been able to accumulate all of the contiguous spectrum it thinks it needs to provide cellular-like services. To carry NEXTEL's argument to its logical conclusion, the Commission would have to re-structure its spectrum allocations for all of the CMRS services. Banks Tower simply does not believe that Congress intended such a result when it adopted the regulatory parity requirements for the CMRS services in the Budget Act.

**II. Adoption of NEXTEL's proposal could  
create impermissible regulatory  
disparity within the SMR industry**

Adoption of NEXTEL's proposal would create two classes of SMR licensees. One of them, those operating ESMR systems, would enjoy the luxury and security of exclusive assignment of a contiguous 10 MHz block of spectrum. The other class, which would include Banks Tower, would have no such luxury and would have little or no room for expansion or for conversion to developing technologies. Such obvious regulatory disparity within the same service would be inconsistent with Sections 3(n)

and 332(c) of the Communications Act and should not be authorized by the Commission.

**III. SMR licensees would be  
adversely affected**

NEXTEL's proposal would require massive relocation of SMR systems. Such relocation would be highly disruptive and costly. NEXTEL proposes that ESMR licensees pay for "retuning" SMR systems now on frequencies in channel groups No. 400-800. However, "retuning" would hardly be the only "cost". Assuming there would be frequencies in the Nos. 1-400 channel groups for non-ESMR systems (an unwarranted assumption), such relocations would result in massive disruptions of existing, ongoing communications services. Banks Tower provides dispatch services to public agencies and to private users in the greater Philadelphia area as well as in much of Southern New Jersey, and in the Atlantic City markets. The disruptions NEXTEL's proposal would engender would seriously affect not only Banks Tower's operations but, more importantly, the operations of the public agencies and the private users that rely on Banks Tower for their land mobile communications. Moreover, in the crowded Philadelphia market, it is highly unlikely that frequencies in the Nos. 1-400 channel groups could be found to accommodate the relocation of the Banks Tower SMR systems as well as other non-ESMR systems. Assuming that frequencies in those lower channel groups could be found and the cost for the conversion is fully paid, the relocation of Banks Tower's SMR systems would be objectionable for yet another reason. It would deprive Banks

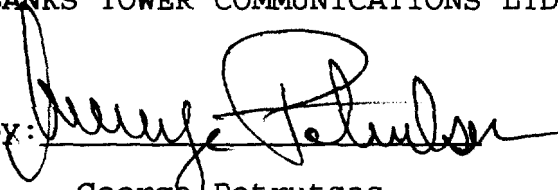
Tower of the opportunity to integrate its facilities into an ESMR system in the future, should such integration become desirable. The value of its system would, therefore, decrease substantially. Banks Tower and other similarly situated SMR licensees would be hurt.

#### IV. Conclusion

For the foregoing reasons, NEXTEL's proposal for the creation of a contiguous 200 channel block for assignment to ESMR licensees in major trading areas should not be adopted.

Respectfully submitted

BANKS TOWER COMMUNICATIONS LTD.

By:   
George Petrutsas

Its Attorney

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Date: July 11, 1994

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